

STATE OF MICHIGAN
IN THE SUPREME COURT

COALITION PROTECTING AUTO
NO-FAULT (CPAN), MARTHA E.
LEVANDOWSKI, GERALD E. & MARY
ELLEN CLARK, A. MICHAEL AND
PAULINA M. DELLER, and M. THOMAS DELLER,

Supreme Court Case No. 150001

Court of Appeals Case No. 314310

Plaintiffs-Appellants,
v.

Ingham County Circuit Court
Case Nos. 12-68-CZ, 12-659-CZ
(Consolidated)

THE MICHIGAN CATASTROPHIC
CLAIMS ASSOCIATION (MCCA),

Honorable Clinton Canady III

Defendant-Appellee

and

BRAIN INJURY ASSOCIATION OF
MICHIGAN (BIAMI), RICHARD K. &
ILENE IKENS, DR. KENNETH & SUSAN
WISSER, GREGORY A. & KAREN M.
WOLFE, AND OTHER SIMILARLY
SITUATED MICHIGAN AUTOMOBILE
POLICY HOLDERS

ORAL ARGUMENT REQUESTED

Plaintiffs-Appellants,
v.

THE MICHIGAN CATASTROPHIC
CLAIMS ASSOCIATION (MCCA),

Defendant-Appellee.

**SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL
OF PLAINTIFFS-APPELLANTS
COALITION PROTECTING AUTO NO-FAULT (“CPAN”),
BRAIN INJURY ASSOCIATION OF MICHIGAN (“BIAMI”)
AND NAMED INDIVIDUALS**

**THIS APPEAL REQUESTS A RULING THAT A MICHIGAN STATUTE
IS UNCONSTITUTIONAL AND INVALID**

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INTRODUCTION

The issue before this Court is whether MCL 500.134(4), enacted pursuant to Section 13(1)(d) of the Freedom of Information Act (“FOIA”), MCL 15.243(1)(d), violates Art. 4, § 25 of the Michigan Constitution by creating an exemption to FOIA without reenacting and republishing the amended section of FOIA.

Art. 4, § 25 provides:

No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.

The Legislature adopted FOIA in 1976 to give Michigan citizens access to full and complete information regarding the affairs of government.¹ The original enactment included § 13, which lists numerous exemptions to FOIA, including § 13(1)(d), which states in relevant part:

(1) A public body may exempt from disclosure as a public record under this act any of the following: . . .

(d) Records or information specifically described and exempted from disclosure by statute.

MCL 15.243(1)(d).

The MCCA is subject to the provisions of FOIA because it is a “public body,” as defined in MCL 15.232(d). This section describes various entities that constitute a “public body” and defines “public body” to include:

[a]ny other body which is created by state or local authority or which is primarily funded by or through state or local authority.

MCCA’s status as a public body within the purview of FOIA is not subject to genuine dispute. See *Application for Leave to Appeal* at 13-15. Recognizing that the MCCA was

¹ FOIA became effective on April 13, 1977.

governed by FOIA, the Legislature amended MCL 500.134 in 1988 to exempt the MCCA from FOIA. MCL 500.134(4) and (6). This statute provides in pertinent part:

(4) A record of an association or facility shall be exempted from disclosure pursuant to section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws.

. . .

(6) As used in this section, “association or facility” means an association of insurers created under this act . . . including, but not limited to, the following:

. . .

(c) The catastrophic claims association created under chapter 31.²

The specific provisions of FOIA have never been amended to reflect that the MCCA is now exempt from its terms.

This appeal does not ask this Court to make policy determinations. The issue this Court has framed is not a political issue but gets to the essence of how citizens are governed. Plaintiffs are invoking the power of this Court as a protector of the people to ensure that the Legislature remains a democratic institution. Art. 4, § 25 reflects a healthy wariness of the Legislature. As Justice Cooley explained in the early § 25 cases, the provision is designed to prevent the passage of laws that would not be supported if passed openly in a way that ordinary citizens can understand.³ This Court should enforce the constitutional provisions that ensure transparency in the legislative process so the people can participate meaningfully in that process and hold the Legislature accountable. This is critical to ensuring that the policy conclusions reached by the Legislature are the product of a democratic process.

² MCL 500.134 was enacted in 1956, and became effective on January 1, 1957. Subsections (4) and (6) were added by a 1988 amendment (effective November 15, 1988).

³ See e.g. *Mok v Detroit Bldg & Sav Ass’n No 4*, 30 Mich 511, 515-516 (1875); *People v Mahaney*, 13 Mich 481, 497 (1865).

ARGUMENT

I. The Historical Purpose of Art. 4, § 25 and its Appellate Court Interpretation Over the Years Confirm That the Enactment of MCL 500.134 Violated This Important Constitutional Provision.

In Michigan, “[a]ll political power is inherent in the people” and “[g]overnment is instituted for their equal benefit, security and protection.”⁴ While the people have, through the enactment of Michigan’s constitution, “allocated certain portions of their inherent powers to the branches of government,”⁵ the delegation is not unrestrained. The reenact and publication requirements of Art. 4, § 25 are part of a constitutional framework designed to ensure effective access to the legislative process and oversight by the people. This is accomplished by making the operations of the Legislature transparent and placing limits upon its otherwise boundless authority. In this way, the people remain informed of legislative proceedings and have notice of the laws they are obliged to obey.⁶

⁴ Const 1963, art 1, §1.

⁵ *Protect Our Jobs v Bd of State Canvassers*, 492 Mich 763, 772; 822 NW2d 534 (2012).

⁶ Other constitutional provisions which shine a light on legislative proceedings include the following:

- Art. 4, § 24, which provides that “[n]o law shall embrace more than one object, which shall be expressed in its title” and that “[n]o bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.” The purpose of this provision “is to insure that both the legislators and the public have proper notice of legislative content and to prevent deceit and subterfuge.” *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441, 465; 208 NW2d 459 (1973).
- Art. 4, § 20, which requires that “[t]he doors of each house [of the Legislature] shall be open unless the public security otherwise requires.”
- Art. 4, § 26, which requires that “[e]very bill shall be read three times in each house before the final passage”, at which point, “the votes and names of the members voting thereon shall be entered in the journal.”

(Footnote continued . . .)

A. Art. 4, § 25 is an Integral Part of the Democratic Process in Michigan and Must Be Enforced As Written.

Art. 4, § 25 has long been a part of Michigan’s constitutional jurisprudence, dating back to the state’s 1850 Constitution. Despite major constitutional revisions in 1908 and 1963, this provision was retained in language nearly identical to its original form. The continuing importance of § 25 has been recognized through 150 years of Michigan jurisprudence, culminating with this Court’s definitive decision in *Alan v Wayne County*, 388 Mich 210; 200 NW2d 628 (1972), and *Alan’s* progeny.⁷

In *People v Mahaney*, 13 Mich 481 (1865), one of the earliest cases to address § 25, Justice Cooley explained that § 25 was designed to remedy the legislative practice of amending statutes by reference through insertions and deletions, but without republishing the amended statute in full. The result of this practice was “endless confusion,” such that legislators were misled as to the amendatory statute’s effect and the public found it difficult to discern the changes in the law. Justice Cooley explained:

The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that *legislators themselves were sometimes deceived in regard to their effect*, and the *public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws*. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to

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- Art. 4, § 29, which imposes restraints on the enactment of local or special acts.
 - Art 4. § 35, which governs the publication and distribution of laws.

⁷ The reenact/republish requirement appeared in Art. 4, § 25 of the 1850 Constitution and in art. 5, § 21 of the 1908 Constitution, along with the title object clause and effective date provisions. The drafters of the 1963 Constitution separated these provisions into sections 24, 25 and 27 of Art. 4. As this Court explained in *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich at 469-470, “[e]xcept for some punctuation and some rearrangement of words in the latter half of the provision, this language has continued through to this date”.

but not republished, was *well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law*, and the constitution wisely prohibited such legislation.

Id. at 497 (emphasis added). Again in *Mok v Detroit Bldg & Sav Ass'n No 4*, 30 Mich 511, 515-516 (1875), Justice Cooley observed that amending a law by reference without fully reenacting the original law as amended was calculated to mislead and deceive the legislators and the public. Accordingly, Art. 4, § 25 was enacted to secure “[h]armony and consistency in the statute law,” requiring nothing “in legislation that is not perfectly simple and easily followed, and nothing that a due regard to clearness, certainty and simplicity in the law would not favor.” *Id.* at 516-517.⁸

Because the authority granted by the constitution derives from its ratification by the people, § 25 must be given the meaning the general public would ascribe. This “rule of common understanding” proceeds from the notion that the constitution “is made for the people and by the people.” *Traverse City Sch Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971) (citations omitted). As this Court explained in *Traverse City*:

“For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people*, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding*, and ratified the

⁸ Justice Cooley remarked:

No one questions the great importance and value of the provision, nor that the evil it was meant to remedy was one perpetually recurring, and often serious. Alterations made in the statutes by mere reference, and amendments by the striking out or insertion of words, without reproducing the statute in its amended form, were well calculated to deceive and mislead, not only the legislature as to the effect of the law proposed, but also the people as to the law they were to obey, and were perhaps sometimes presented in this obscure form from a doubt on the part of those desiring or proposing them of their being accepted if the exact change to be made were clearly understood.

Mok, 30 Mich at 516.

instrument in the belief that that was the sense designed to be conveyed. (Cooley's Const Lim 81)."

Id. (emphasis added by court). This means that the object of this Court's review in the present case must be to accomplish the intent of the people who ratified the constitution, giving the most obvious meaning to the words used. As Justice Markman explained in *Blank v Dep't of Corrections*, "the ultimate source of political power in Michigan" is the people, "the same 'we the people' who ratified the 1963 Constitution and whose constitutionally expressed intentions this Court is obligated to effectuate ..." 462 Mich 103, 147; 611 NW2d 530 (2000) (Markman, J., concurring).

B. The Principal Supreme Court Decision Controlling the Issue at Bar is *Alan v Wayne County*, Which Illustrates the Type of Legislative Enactments That Violate Art. 4, § 25.

The controlling case regarding the application of Art. 4, § 25 is this Court's decision in *Alan v Wayne County*. *Alan* is the touchstone of Art. 4, § 25 jurisprudence because it illustrates how the provision is to be applied in practice. The controlling rule of *Alan* is that if one statute is intended to amend and alter another statute, it must be "stated specifically and those statutes must be amended or altered directly and republished as contemplated by *Const 1963, Art. 4, § 25*." *Id.* at 285. In other words, *Alan* demands strict adherence to the letter and spirit of this constitutional provision. Each and every statute must make sense when read on its own. Statutory provisions designed to amend a particular statute cannot be hidden in some other obscure statute. Another important aspect of *Alan* is the limitation it has placed upon judicially-recognized exceptions to Art. 4, § 25. *Alan* has significantly narrowed the scope of the Art. 4, § 25 exceptions so they do not swallow the rule.

Alan resolved the competing approaches to Art. 4, § 25 that developed in the common law over the years. These divergent views are reflected in the cases of *Mok v Detroit Bldg & Sav*

Ass'n No 4, *supra*, which required strict adherence to the letter of Art. 4, § 25, and *Burton v Koch*, 184 Mich 250; 151 NW 48 (1915), which allowed something less. *Alan*, *Mok* and *Burton* are addressed below. In order to fully appreciate the law imparted by these cases and to place them in proper context, it is first necessary to discuss and understand the judicially-created exceptions to Art. 4, § 25 that evolved over the years. Thus, we begin with a discussion of these exceptions to Art. 4, § 25 before proceeding to a discussion of *Mok*, *Burton* and *Alan*.

1. The Exceptions to Art. 4, § 25.

From the earliest cases addressing the requirements of Art. 4, § 25 two exceptions emerged. They are known as the *amendment by implication* exception and the *act complete in itself* exception. These exceptions are interrelated and often addressed together. See, e.g., *Mahaney*, 13 Mich at 496-497; *Mok*, 30 Mich at 522-523.

An *amendment by implication* exists when a harmonious statute unintentionally affects another statute but does not add to, subtract from, or fully repeal the prior statute. If the statute expressly amends the pre-existing statute or refers to the prior statute by title, the exception does not apply. See *Nalbandian v Progressive Michigan Ins Co*, 267 Mich App 7, 14; 703 NW2d 474 (2005). The exception is likewise inapplicable if the Legislature knew of and intended to affect a prior statute. *Alan*, 388 Mich at 285. In *Alan*, this Court held that the amendment by implication exception should be limited to those “special fact situation[s]” presenting “two accidentally absolutely conflicting statutes requiring a determination that one or the other applies.” *Id.* at 285-286.

The “*act complete in itself*” exception applies when the amendatory statute comprehensively covers the subject matter addressed by the amendment. *Alan*, 388 Mich at 278-279. A statute complete in itself cannot rely upon any other statute to illuminate the meaning of its provisions or to give them effect. If the amending statute is written in a fragmentary manner,

with insertions and deletions designed to change another statute, or if it is necessary to piece the statute together with other existing laws in order to understand the meaning of the amendment and to give it effect, the amending statute is not complete in itself. See, e.g. *Mok*, 30 Mich at 529. Likewise, if the subject matter of the amendment is comprehensively addressed by the statute being amended (rather than the statute creating the amendment), the act complete in itself exception cannot apply to save the amending statute. *Nalbandian*, 267 Mich App at 15-16.

One of the earliest articulations of the amendment by implication exception and the act complete in itself exception is found in *People v Mahaney*, *supra*. The § 25 challenge in *Mahaney* was directed to a statute which established a police government in the City of Detroit. The statute abolished the offices of city marshal and assistant marshal, transferring their duties to the police superintendent and others under his direction. Finding no constitutional infirmity, the Court concluded that the act did “not assume in terms, to revise, alter or amend any prior act, or section of an act, but by various transfers of duties it has an *amendatory effect by implication*, and by its last section it repeals all inconsistent acts.” *Mahaney*, 13 Mich at 496 (emphasis added). The Court further noted that an *act complete in itself* does not violate the terms of Art. 4, § 25, stating:

An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not republished was well calculated to mislead the careless as to its effect... But an act complete in itself is not within the mischief designed to be remedied by this provision, and cannot be held to be prohibited by it without violating its plain intent.

Id. at 497 (emphasis added).⁹

⁹ The *Mahaney* court explained that § 25 must “receive a reasonable construction, with a view to give it effect” and “if, whenever a new statute is passed, it is necessary that all prior statutes, modified by it by implication should be re-enacted and published at length as modified, then a large portion of the whole code of laws of the state would require to be republished at every
(Footnote continued . . .)

In the years following *Mahaney*, a number of decisions gave impermissible breadth to these exceptions as a means of upholding statutes against violations of Art. 4, § 25. In *People v Wands*, 23 Mich 385, 389 (1871), this Court applied the *Mahaney* analysis to a statute designed to alter the number of votes required for a board of supervisors to act. Opponents argued that the act also altered by implication other parts of the original act that were not reenacted. With little discussion, the Court adopted the rationale of *Mahaney*. See also *Swartwout v Michigan Air Line Railroad Co*, 24 Mich 389, 399 (1872) (following *Mahaney* and *Wands*, and stating “we have heretofore decided that statutes which amend others by implication are not within the contemplation of [§ 25]”).¹⁰

In 1875, this Court decided the seminal case of *Mok v Detroit Bldg & Sav Ass’n No 4*, the precursor to *Alan v Wayne County*. In *Mok*, this Court held that an 1869 statute violated Art. 4, § 25 because it amended various sections of an 1853 act without “re-enacting them in full” and improperly attempted to apply the act to a new class of corporations by “indirect amendment.” *Id.* at 529.

session, and parts of it several times over, until, from mere immensity of material, it would be impossible to tell what the law was.” 13 Mich at 497. *Alan* has since dispelled the concerns expressed in *Mahaney* relative to the burden that would be imposed upon the Legislature if it were required to republish statutes at length. In *Alan*, this Court recounted the advancements in technology and the sophisticated legislative and research services available to the Legislature. 388 Mich at 283. However, this Court also emphasized that the Legislature could not avoid its constitutional duties and requirements, even where compliance might be difficult. *Id.* at 281, 282-283. With today’s technology, reenactment and publication of amended statutes can occur with the touch of a button.

¹⁰ See also *Checker Mutual Automobile Ins Co v Wayne Circuit Judge*, 330 Mich 553; 48 NW2d 129 (1951), which applied the amendment by implication and act complete in itself exceptions in an interwoven manner. In *Checker*, the general stay of proceedings statute was amended by a statute which permitted a stay of judgment pending appeal without bond if there was insurance to cover the claim. This Court concluded that the reenact/publication requirement did not apply because the new statute was “independent legislation, original in form and complete within itself.” *Id.* at 558-559.

Mok examined the relationship between an 1855 statute, which governed the formation of corporations to build and lease houses and other tenements, and an 1869 statute, which provided that corporations for building and savings associations can be incorporated pursuant to the 1855 statute. *Id.* at 518-519. The 1855 act provided that corporations might be formed under, and possess the rights and liabilities described in, an 1853 act governing the formation of corporations for mining, smelting or manufacturing of various minerals. *Id.* at 518. In addition, the 1869 act made changes to the 1853 act without reenacting the sections changed, making it necessary for interested persons to “fit the new act to the old as best they may.”¹¹ This Court held that the act violated Art. 4, § 25 and was not saved as an amendment by implication or an act complete in itself.

The amendment by implication exception was held not to apply because all of the alterations which the 1869 act intended to make in the 1853 act were “made in express terms.” *Id.* at 522. Further, the act was not complete in itself; rather the Legislature attempted to “duplicate an act, but at the same time to accommodate it by indirect amendment to a new class of cases,” which violates the requirement that each act of legislation be complete in itself, and not “fragments which are incapable of having effect or of being understood until fitted in to other acts.” *Id.* at 529.

Despite *Mok*’s clear command as to the proper constitutional method of amendment, this Court deviated from *Mok* and used a different standard in *Burton v Koch*, 184 Mich 250; 151

¹¹ As the Court explained, “for the whole frame-work of the corporations to be formed by its [the 1869 act’s] permission the associates are referred to the act of 1855, which in turn refers them to the act of 1853, where, except in a few particulars, and most of those unimportant, they are to find their law and their guide in organizing and conducting their corporate affairs.” *Id.* at 522.

NW 48 (1915). In *Burton*, this Court held that an amendment to the statute governing voter qualifications did not violate Art. 4, § 25 because its purpose was made clear by the words of the amendment and “no other method of expressing the legislative purpose could make the purpose more certain than it is made.” *Id.* at 254. *Burton* hinged on the absence of any way (“no other method”) for the Legislature to make the amending act any clearer (and, as will be discussed below, even that was too lax for the *Alan* court, which ultimately overruled *Burton*).¹² *Burton* allowed the Legislature to amend a statute without reenacting and republishing the amended statute as long as the amending statute was published.

In *Burton*, the pivotal statute was 1881 Pub Act 164, which governs the operation of school districts. Section 17 of Chapter 2 addressed voter requirements. Chapter 13 of Section 10 allowed special enactments for certain localities, which meant that the voter provisions were not controlling in every district. Desiring to establish uniform voter qualifications, the Legislature enacted 1913 Public Acts 146, which amended Section 17 of Act 164 to remove the effect of Section 10. To accomplish this, it added words to Section 17 to the effect that no special legislation should be interposed to qualify the general legislation it was enacting, instead of amending Section 10. The Court held that Pub Act 146 properly amended Pub Act 164 and did not violate § 25 because Section 17 of Chapter 2 was reenacted and republished at length even though Section 10 of Chapter 13, the effect of which was altered by the amendment, was not. On this basis, the Court concluded that the Constitution had been “precisely obeyed.” *Id.* at 255.

¹² In this case, there was another method – the correct method – to amend FOIA to exempt the MCCA from its reach, which was to place the MCCA exemption within the exemption section of FOIA, MCL 15.243.

2. *Alan v Wayne County* Adopts *Mok* and Limits the Exceptions.

Burton departed from this Court's prior pronouncement in *Mok* regarding the application of Art. 4, § 25 because *Mok* would have required that Section 10, the statute being altered, be reenacted and republished along with Section 17. It is therefore not surprising that, when this Court analyzed the disparate holdings of *Mok* and *Burton* in *Alan*, it affirmed the rule in *Mok* and overruled *Burton*. *Alan* held that if one statute is intended to alter another statute, the altered statute must be directly amended and republished, as Art. 4, § 25 requires. *Alan* requires strict adherence to the letter and spirit of Art. 4, § 25 and expressly rejects the notion that compliance can occur by shortcut.

Alan was an action against the Wayne County Stadium Authority to restrain the delivery of bonds for payment of, and the ultimate construction of, a stadium to be leased to the Detroit Tigers. The bonds were cast as revenue bonds but purportedly backed by the full faith and credit of the county. 388 Mich at 234-235.¹³ During the course of the litigation, the Governor certified questions for this Court's consideration, including the constitutional adequacy of asserted statutory standards. *Id.* at 243. One question was whether § 11 of 1948 PA 31 ("Act 31"), the Building Authority Act, could lawfully amend or alter the provisions of 1933 PA 94 ("Act 94"), the Revenue Bond Act, by "creating 'exceptions' to it without reenacting and publishing the section or sections amended." *Id.* at 269 (emphasis added). This Court concluded that it could not.

The *Alan* court noted that certain cases reflect an aberration to the amendment by implication exception "by the practice of hair splitting [sic] the meaning of the constitution so

¹³ As this Court explained, "[t]he Stadium Authority advertised the stadium bonds to the taxpayers and public of Michigan as revenue bonds but advertised them to the bond buyers as bonds backed by the obligation of Wayne County to tax without limit." *Id.* at 235.

that only the specific act *directly* amended need be published while others that were affected need not be published.” The Court cited *Burton* as an example of this aberrant view, noting that the reasoning of *Burton* “allows the Legislature to amend, repeal, revise or alter any statutes on the books without reenacting and republishing them so long as they publish the single statute which is intended to affect all the others.” *Id.* at 279. Rejecting this approach, the *Alan* court said that it “cannot approve a construction that allows the purpose and spirit of the constitution to be evaded by seizing on particular words and following them ‘precisely’ to the detriment of the plain meaning of the full text.” *Id.* at 280. Contrasting the rule of *Burton* to the rule of *Mok*, this Court explained:

Mok stands for the rule that you cannot amend statute C even by putting in statute B specific words to amend statute C, unless you republish statute C as well as statute B under Const 1963, art 4, § 25.

Burton, on the other hand, stands for the rule that you can amend statute C by putting in statute B words for the purpose of amending statute C so long as you make no specific reference to C, merely by republishing statute B under Const 1963, art 4, § 25, but without republishing statute C.

Id. at 280-281. Convinced that the constitution “is not satisfied with halfway measures” and does not “prefer dissimulation to straightforwardness,” this Court overruled *Burton* and adopted the rule of *Mok*.¹⁴

The *Alan* court considered the contrary result in *People v Stimer*, 248 Mich 272 (1929), which held that an act that created the state Department of Agriculture, abolished the Department of Animal Industry, and transferred the powers of Animal Industry to the Department of

¹⁴ In addition to *Mok*, *Alan* relied upon *Clay v Penoyer Creek Improvement Co*, 34 Mich 204, 208-210 (1876) (noting that the rule of *Mok* “is still the law of this state”) and *In re Petition of Auditor General*, 275 Mich 462, 467-468 (1936), which held that when the Legislature intends to amend a previous act, it must do so in conformance with the plain and unequivocal requirements of § 25. See *Mok*, 30 Mich at 274-275.

Agriculture did not offend § 25 by amending the former act without “repassing and republishing it.” *Id.* at 275-276. The *Stimer* court relied upon *Mahaney* and reasoned that the portion of the act which prescribed the transferred Animal Industry powers “was not ‘revised, altered, or amended.’ It still stands as part of the statutory law of the State, and therefore there was no occasion for the re-enactment or republication of that portion of the statute.” *Id.* at 276 (quoting *Stimer*, 248 Mich at 278).

The *Alan* court disagreed with the *Stimer* analysis, finding persuasive the dissenting opinion of Justice Potter, who found that the act violated the reenact and republication requirement of Art. 4, § 25. The *Alan* court recounted Justice Potter’s analysis of the “so-called amendment by implication of other statutes, when these other statutes are not specifically mentioned either by number, title or otherwise,” and adopted Justice Potter’s dissent relative to the manner in which a court is to determine whether an act is complete in itself. That analysis requires a comparison of the provisions of the amending statute with the provisions of the existing statute to determine whether the amending statute is “complete on the subject with which it deals,” i.e., the subject matter of the amendment. If, relative to that subject matter, the new statute changes the prior law by intermingling new and different provisions with the old ones, the new statute is amendatory and must be republished *as part of* and within the prior law.

This is so irrespective of the title or label that has been attached to the amendment:

“The character of an act, whether amendatory or complete in itself, is to be determined not by its title, alone, nor by the question whether it professes to be an amendment of existing laws, but by comparison of its provisions with prior laws left in force, and if it is complete on the subject with which it deals it will not be subject to the constitutional objection, but if it attempts to amend the old law by intermingling new and different provisions with the old ones or by adding new provisions, the law on that subject must be regarded as amendatory of the old law and the law amended must be inserted at length in the new act.” Nelson v Hoffman, 314 Ill. 616 (145 N.E. 688, 690) [1924]; People v Knopf, 183 Ill. 410 (56 N.E. 155) [1900].” Stimer, 293. [Emphasis in original.]

Id. at 278-279. *Alan* also concluded that the amendment by implication exception should only apply in limited cases where,

because of a special fact situation a court is faced with two *accidentally* absolutely conflicting statutes requiring a determination that one or the other applies (and thus an amendment or repeal of the other by implication follows in the fact circumstances). These kinds of cases do not result from any deliberate misleading by the Legislature or failure to make all reasonable efforts to make clear in the statutes what is intended, but rather, as we said in *Mok*, 517 “[i]t is probable that if the requirement has at any time been disregarded by the legislature, the default has proceeded *from inadvertence merely*.”

Alan, 388 Mich at 285-286 (emphasis added).¹⁵

3. More Recent Applications of *Alan*.

The *Alan* rule was thoughtfully applied by the Court of Appeals just ten years ago in *Nalbandian v Progressive Michigan Ins Co*, 267 Mich App 7, 8; 703 NW2d 474 (2005). In *Nalbandian*, the point system of the Michigan Insurance Code allowed insurers to allocate points for speed limit violations when considering whether and at what rate to insure an individual. Pursuant to MCL 500.2103(4)(a)(iii), two points could be assessed for exceeding the speed limit by 10 miles per hour or less. Notwithstanding that provision, the Legislature amended the Michigan Vehicle Code, not the Insurance Code, to disallow any insurance points for speed violations of ten miles per hour or less in 55 mile per hour speed zones. MCL 257.628(11).

Relying upon *Alan*, the Court of Appeals concluded that the Michigan Vehicle Code provision violated § 25 because it amended Section 2103(4)(a)(iii) of the Michigan Insurance Code without republication. *Nalbandian*, 267 Mich App at 14. The Court rejected the argument that the act containing the vehicle code section was “complete in itself.” The Court explained:

¹⁵ This Court distinguished *Alan* on its facts in *Midland Township v State Boundary Comm*, 401 Mich 641, 660; 259 NW2d 326 (1977), which concluded that the 1970 amendment of the home rule cities act, while incorporating by reference provisions of the 1968 state boundary commission act, did not dispense with or change any provision of the 1968 act, unlike *Alan*.

Under this analysis, 1987 PA 154 was not an “act complete in itself.” *The subject matter of the contested vehicle code § 628(11), the imposition of insurance eligibility points, is not addressed comprehensively within 1987 PA 154 6.* Instead, vehicle code § 628(11) is a *piecemeal amendment to an existing comprehensive statutory scheme regarding insurance eligibility points and speed limit infractions.* 1987 PA 154 “attempt[ed] to amend the old law by intermingling new and different provisions with the old ones” found in the *Insurance Code.* *Alan, supra* at 279, quoting *Stimer, supra* at 293 (POTTER, J., dissenting) (citations deleted; quotation marks deleted; emphasis deleted). Thus, 1987 PA 154 was not an act complete in itself and Const 1963, art 4, § 25 applied to its enactment.

Id. at 15-16 (emphasis added).¹⁶

The Court likewise rejected the assertion that the Motor Vehicle Code provision was an amendment by implication, finding that it resulted from the Legislature’s knowledge of the two point rule and its intent to abrogate it. The Court explained:

1987 PA 154, by which the 55 mph zone exception was enacted, was not a general act that, as a result of some special fact situation, presents an accidental conflict with the 2 point rule of the Insurance Code. The conflict between the two is not one resulting from mere inadvertence. To the contrary, vehicle code § 628(11) quite clearly resulted from a legislative knowledge of the Insurance Code’s 2 point rule and an intent to abrogate that rule with respect to 55 mile per hour speed zone violations. The 55 mph speed zone exception constitutes a “fragment[ary]” attempt to “accommodate [the 2 point rule] by [an] indirect amendment[.]” that can only be understood or given effect by “fitt[ing]” the two acts together. See *Alan, supra* at 272. “No such legislation can be sustained.” *Id.* quoting *Mok, supra* at 529. “[W]hen the Legislature intends to amend a previous act, it must do so in conformance with the plain and unequivocal requirements of . . . Const 1963, art 4, § 25.” *Alan, supra*, at 275.

This Court has more recently addressed § 25 only in passing. In a footnote in *People v Koon*, 494 Mich 1; 832 NW2d 724 (2013), this Court considered the amendatory effect of an immunity-from-prosecution provision in the Michigan Medical Marihuana Act (“MMMA”),

¹⁶ The *Nalbandian* Court deemed it irrelevant that the act did not expressly reference the Insurance Code. 267 Mich App at 8-9, 16-17. See also *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441, 517-518; 208 NW2d 469 (1973) (“The purpose of art 4, § 25 is to give notice and certainty. Obviously if reference to the title only is not enough for notice and certainty, giving no reference at all is *a fortiori* not enough.”).

MCL 333.26421 *et seq*, upon the zero-tolerance provision of the Michigan Vehicle Code, MCL 257.625(8). No violation was found because the MMMA was held to be an act complete in itself:

While neither party raised the issue, we conclude that the MMMA's enactment without republishing MCL 257.625(8) did not run afoul of Const 1963, Art. 4, § 25, which states that "[n]o law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length." Assuming, without deciding, that this provision applies to voter-initiated laws, we conclude that the MMMA is an "act complete in itself" and, therefore, falls within a well-settled exception to Const 1963, Art. 4, § 25. *People ex rel Drake v Mahaney*, 13 Mich 481, 497 (1865) ("But an act complete in itself is not within the mischief designed to be remedied by this provision, and cannot be held to be prohibited by it without violating its plain intent."). See also *In re Constitutionality of 1972 PA 294*, 389 Mich 441, 477; 208 NW2d 469 (1973) (concluding that the no-fault insurance act was an act complete in itself and, thus, did not violate Const 1963, Art. 4, § 25, though it affected provisions that were not republished).

Id. at 9, n 22.¹⁷

In a peremptory order of reversal, this Court held in *In re Application of International Transmission Co*, 828 NW2d 23; 2013 Mich LEXIS 299 (2013), that Art. 4, § 25 was not violated by the passage of Part 4 of 2008 PA 295, which established procedures for the development of wind energy zones and authorized the issuance of "expedited siting certificates" approving the placement of wind energy transmission lines. Challengers argued that the Legislature violated Art. 4, § 25 by failing to reenact and republish 1995 PA 30, which generally governs the construction of electric transmission lines. This Court deemed 2008 PA 295 an "act

¹⁷ The MMMA and FOIA are alike in that each respectively preempts the field of statutory regulation with respect to the subject matters they address. The amendment in *People v Koon* was sustained because the MMMA, as the amending statute, was complete in itself with respect to the regulation of medical marihuana. FOIA is also a statute complete in itself with respect to the subject matter it regulates – the public's right to access the records and information of public bodies. As discussed below, MCL 500.134(4) is not complete in itself with respect to that (or any other) subject matter.

complete in itself” because it “provides a comprehensive legislative scheme for issuing expedited certificates, and clearly intends construction of approved transmission lines.” *Id.* at *2.

In *People v Blount*, 87 Mich App 501, 504-505; 275 NW2d 21 (1978), the Court of Appeals concluded that the felony-firearm statute was an act complete in itself because it required no reference to other statutes for its meaning and did not alter or amend another statute by reference to its title only. Similarly, in *Charter Township of Meridian v City of East Lansing*, 101 Mich App 805, 808; 300 NW2d 703 (1980), the Court of Appeals held that an act containing provisions regarding annexation of portions of charter townships to contiguous cities or villages was an act complete in itself because it did not require reference to any act to determine the import of its provisions or to be effectuated.¹⁸

To summarize, the controlling case of *Alan* and its progeny make it clear that Art. 4, § 25 is triggered if a statute revises, alters or amends a prior statute by dispensing with or changing its provisions without reenacting and publishing the amended statute at length. If this threshold is met, it is necessary to determine whether the new statute is saved from constitutional infirmity by either the amendment by implication exception or the act complete in itself exception. As will be demonstrated below, MCL 500.134(4) clearly violates Art. 4, § 25, and it is not saved by either of these exceptions.

¹⁸ See also *City of Detroit v Jones & Laughlin Steel Corp*, 77 Mich App 465, 471-472; 258 NW2d 521 (1977) (finding that the Tax Tribunal Act is complete in itself because it provides “for the personnel, jurisdiction, functions, practices and procedure of the tribunal,” “sets forth an appeal procedure,” “sets up a minor division to handle different types of claims” and also “settles the jurisdiction of pending matters subject to the jurisdiction of the tribunal”); *Weber v Township of Orion Building Inspector*, 149 Mich App 660, 664; 386 NW2d 635 (1986) (Solid Waste Management Act is an complete within itself).

C. MCL 500.134 Clearly Amends FOIA Without Republishing the Relevant Provisions of FOIA and the Authority To Proceed in That Manner Cannot Constitutionally Be Conferred by MCL 15.243.

MCL 500.134(4) violates Art. 4, § 25 because it exempts the MCCA from FOIA without reenacting and republishing FOIA to include the MCCA exemption. As a “public body” within the meaning of FOIA,¹⁹ the MCCA is subject to the disclosure requirements contained within MCL 15.233 and other FOIA provisions. To the extent that MCL 500.134(4) purports to exempt the MCCA from the reach of FOIA, as the MCCA contends, the statute clearly revises, alters and amends FOIA in a most fundamental way – it immunizes a specifically named public body from its reach without openly amending a single word in FOIA.

There is no form of amendment greater in magnitude than one which creates an exemption from obligations imposed by statute. When a citizen, business or entity is to no longer be governed by a statute’s requirements because of a subsequently enacted statute, the subsequent statute is tantamount to a repeal of the former statute as to that citizen, business or entity. It strains credulity to conclude that such an enactment is not “an amendment.” There can be no reasonable doubt that statutes which create exemptions to other existing statutes amend those statutes in a very fundamental way.

Here, because MCL 500.134(4) amended FOIA, it was incumbent upon the Legislature to republish the sections of FOIA altered and amended, particularly MCL 15.243, to make clear that the MCCA was no longer subject to FOIA. This is so irrespective of whether MCL 500.134(4) changes the specific wording of FOIA. In *Alan*, this Court considered the effect of a statute which created exceptions to another statute without reenacting and publishing the

¹⁹ MCL 15.232(d)(iv).

amended statute at length. This Court held that Art. 4, § 25 was clearly violated. 388 Mich at 269. The same result is required here.

In the case at bar, the Court of Appeals concluded that MCL 500.134 does not amend FOIA, but rather works “pursuant to” FOIA because the Legislature *drafted* Section 13(1)(d) of FOIA, MCL 15.243(1)(d), “*in a manner to allow future statutory exemptions without the need to revise or amend FOIA.*” *Coalition*, 2014 Mich App LEXIS 916 at *15 (emphasis added). The danger and constitutional repugnancy of this concept must be emphasized. What the Court of Appeals is really saying by this rationale is that the Legislature can pass a law that contains a provision stating in principle that “This statute can be amended by simply inserting language in any statute that a future Legislature may enact” and such a legislative pronouncement will be effective in relieving all future legislatures from their constitutional obligation to comply with Art. 4, § 25.

The Constitution does not permit the Legislature to give itself permission to avoid its constitutional duty by enacting a statute which negates the Constitution’s requirements. Rather, the Legislature must wield its legislative power in a constitutionally permissible manner. See *Blank v Dep’t of Corrections*, 462 Mich 103, 119; 611 NW2d 530 (2000). In exercising its power to adopt legislation, “the Legislature remains constrained by the state and federal Constitutions and the rights they guarantee.” See *AFT Michigan v Public School Employees Retirement Sys*, 297 Mich App 597, 627; 825 NW2d 595 (2012). See also *Council 23 Am Fed’n of State, Cnty and Mun Emp, AFL-CIO v Civil Serv Comm’n*, 32 Mich App 243, 248; 188 NW2d 206 (1971) (“[t]he legislature’s power to legislate is unlimited, *except as expressly limited by the Constitution*”) (emphasis added). This is so even if compliance is difficult. *Alan*, *supra*, 388 Mich at 282-283. As explained in *Alan*:

There is nothing complicated, burdensome, unreasonable or obscure about what we say here today. *If a bill under consideration is intended whether directly or indirectly to revise, alter, or amend the operation of previous statutes, then the constitution, unless and until appropriately amended, requires that the Legislature do in fact what it intends to do by operation.*

388 Mich at 285 (emphasis added). Indeed, in the dissenting opinion in *Stimer*, which the *Alan* court deemed persuasive, Justice Potter remarked that “the legislature has no power and authority while the provision of the Constitution remains in force, to set it aside by an act of legislation.”

248 Mich at 296. Justice Potter continued:

The members of the legislature are but agents of the people. They derive all their power and authority from the people. The Constitution was adopted by the people in the exercise of their sovereignty. It is the fundamental law. It may not be repealed by the legislature.

Id. at 296.²⁰

When the constitutional limitations upon the legislative process are enforced, this Court can have confidence that the integrity of the process remains intact and worthy of the deference that this Court affords. Permitting the Legislature to excuse itself from the transparency restraints on its legislative power undermines the body as a democratic institution and imperils the public’s confidence in the legislative process because it permits special interests to obtain benefits they could not win if the public were easily able to understand what the Legislature was doing. This Court should not endorse such artifice as a legitimate means of constitutional avoidance, or construe the constitution in a manner that renders a provision effectively inoperative. *Traverse City Sch Dist*, 384 Mich at 406; see also *Council No 11 v Civil Serv Comm’n*, 408 Mich 385, 405; 292 NW2d 442 (1980); *Blank v. Dep’t of Corrections*, 462 Mich at

²⁰ Further, the Legislature may not do indirectly what it is prohibited from doing directly. *Atty Gen v Perkins*, 73 Mich 303; 41 NW 426 (1889), *Brennan v Connolly*, 207 Mich 35; 173 NW 511 (1919).

146 n 16 (Markman, J., concurring) (“[T]here is no rule of construction ... that requires the original meaning of a constitutional provision to yield in order to save a statute.”).

D. The “Act Complete In Itself Exception” to Art. 4, § 25 Does Not Apply to Save MCL 500.134 From Unconstitutionality.

As previously explained, the common law has created two exceptions to Art. 4, § 25. One of the exceptions applies to “*an act complete in itself*.” If the amending statute is an act complete in itself, it is saved from the application of Art. 4, § 25. It is clear that MCL 500.134(4) is not an act complete in itself and thus this exception does not apply.

The appropriate analysis regarding this exception requires this Court to determine whether MCL 500.134(4) is complete in itself *with respect to the subject matter of the amendment it creates*. The subject matter of the amendment is the democratic right of Michigan citizens to acquire information from the public bodies that work for them through the Freedom of Information Act. This unique subject matter is not comprehensively addressed by MCL 500.134. On the contrary, FOIA, MCL 15.231, *et seq*, is the only statute that addresses the public’s right to access the records and information of public bodies, and it does so comprehensively.

For example, FOIA describes the right of access afforded by the act and the procedure for exercising that right. It identifies the public bodies subject to the act and comprehensively lists exemptions, including exemptions for law enforcement, penal institutions, protected health information, trade secrets, public security, and numerous others.²¹ It prescribes the manner in which public bodies must respond to requests for information and provides for the designation of FOIA coordinators. The act prescribes fees for inspection and imposes limitations on those fees. It directs the time line for response, procedures for appeal and enforcement, and penalties and

²¹ The exemptions to FOIA are addressed in detail in MCL 15.243, Section 13 of FOIA.

damages for violations. Finally, it also contains venue, burden of proof, attorney fees and cost provisions.

FOIA is unquestionably a comprehensive omnibus act and is complete in itself. MCL 500.134(4) is not complete in itself with respect to the subject matter of FOIA or any other subject matter. Rather, MCL 500.134(4) seeks to alter the scope of FOIA by enacting a provision in another act that states that the MCCA (and other associations and facilities identified in subsection (6)) are no longer subject to FOIA. The Act does not even comprehensively address the MCCA.²²

The obvious reality here is that the amending statute (MCL 500.134(4)) is not “complete in itself” but is amending a statute (MCL 15.231 *et seq*) that is “complete in itself.” MCL 500.134(4) is nothing more than a fragmentary exemption to FOIA, which must be pieced together with the whole of FOIA to gain meaning and effect. Without specifically reading FOIA, the public would not be able to fully appreciate the MCCA exemption because citizens would not know what the MCCA is exempt from (i.e., what requirements are no longer applicable to the MCCA). It is only by “fitting” MCL 500.134(4) together with FOIA that the import of the exemption can be understood. Between the two statutes, the only one that is an act complete in itself is FOIA.

This conclusion is strongly supported by the holding in *Nalbandian, supra*, where the Court of Appeals refused to apply the act complete in itself exception when the subject matter of the amendatory statute was not comprehensively addressed in that statute, but was rather a

²² MCCA in particular was created by an amendment to the Michigan No-Fault Act, which is Chapter 31 of the Insurance Code. *See* MCL 500.3104. Regarding the creation of the MCCA, see the Application for Leave to Appeal at 13.

piecemeal amendment to another statute which did comprehensively address the subject matter. Rather, the amending statute was attempting to amend the existing law by intermingling new and different provisions with the old ones. 267 Mich App at 16. For these same reasons, the exception does not apply here.

E. The “Amendment By Implication” Exception to Art. 4, § 25 Does Not Apply to Save MCL 500.134 From Unconstitutionality.

The second common law exception to Art. 4, § 25 applies to an “*amendment by implication.*” An amendment by implication exists if the amendatory effect of the statute is unintentional and by implication only. In that circumstance, the amendatory statute is saved from the application of Art. 4, § 25. MCL 500.134(4) does not amend FOIA by implication and this exception does not apply.

MCL 500.134(4) certainly does not amend FOIA inadvertently or accidentally. The amendment is express, referring to the title of FOIA by reference. MCL 500.134(4) states in pertinent part (with emphasis added):

(4) A record of an association or facility shall be exempted from disclosure pursuant to section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws.

. . .

(6) As used in this section, “association or facility” means an association of insurers created under this act . . . including, but not limited to, the following:

. . .

(c) The catastrophic claims association created under chapter 31.

The embedded reference to FOIA demonstrates that the Legislature was aware of and intended to amend FOIA when it enacted MCL 500.134(4). That is the sole purpose of MCL 500.134(4). Thus, it does not present the “special fact situation” presenting “two *accidentally* absolutely

conflicting statutes” that this Court deemed necessary to trigger the amendment by implication exception in *Alan*. 388 Mich at 285-286.

Nalbandian is again instructive. Application of the amendment by implication exception was rejected in *Nalbandian, supra*, where the amendatory effect did not occur inadvertently because of a special fact situation. Rather, it resulted from legislative knowledge of the first statute and an intent to abrogate it. The amending statute was a fragmentary attempt to modify the prior law and could only be understood by fitting the two acts together. 267 Mich App at 14.

The same is true here. The language of MCL 500.134 evidences the Legislature’s express intent to exempt MCCA, in some way, from FOIA. The purported exemption does not occur by accident or implication – it is explicit. *The Legislature not only intended this piecemeal FOIA amendment, it expressly contemplated in MCL 15.243(d) that it would amend FOIA in a fragmentary, indirect manner, by embedding exemptions to FOIA in other statutes, contrary to the imperative of Art. 4, § 25.* The amendment by implication exception does not save MCL 134(4) from constitutional infirmity.

II. The Passage of MCL 500.134(4) Is a Clear Deviation From the Way the Michigan Legislature Previously Enacted Amendments to FOIA, Thereby Further Illustrating Its Constitutional Infirmity.

The Legislature has amended FOIA specifically for the purpose of creating exemptions on several occasions over the years and it has done so in a way that conforms to the requirements of Art. 4, § 25. For some reason, however, the Legislature deviated from that practice when it amended FOIA by enacting MCL 500.134(4). The fact that this deviation from past practice occurred, is further support for the conclusion that the approach taken by the Legislature in the passage of MCL 500.134(4) was constitutionally impermissible. Some examples of previous amendments to FOIA that were accomplished in a constitutionally compliant manner are discussed below.

Through the enactment of 2000 PA 88, the Legislature amended FOIA to protect information necessary to comply with the federal Family Educational and Privacy Act of 1974. This was accomplished by adding new language within the exemption section of FOIA. MCL 15.243(2) provides:

A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g, commonly referred to as the family educational rights and privacy act of 1974.

Similarly, with the passage of 2002 PA 130, the Legislature amended FOIA to exempt information relating to critical infrastructure protection. Enacted within the FOIA exemption section as subsection 13(1)(y), MCL 15.243(1)(y), this provision protects from disclosure:

Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

Yet again, in 2006, FOIA was amended by 2006 PA 482 to exempt protected health information from disclosure by public bodies. In order to accomplish this amendment, the Michigan Legislature reenacted FOIA with added language in subsection 13(1)(l), MCL 15.243(1)(l), which exempted from disclosure:

Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103.

More recently, the Legislature enacted 2014 Public Act 563, effective July 1, 2015, to amend Sections 4, 5, 10 and 11 of FOIA and to add new Sections 10a and 10b, relating to some of the procedural aspects of FOIA. This was accomplished by clearly publishing and reenacting within FOIA the entire sections as amended and added.

The practice of embedding FOIA exemptions in other statutes is particularly troublesome given the transparency purpose of FOIA. The omnibus FOIA statute is designed to give citizens access to “full and complete information” regarding the affairs of public bodies so they “may fully participate in the democratic process.” See MCL 15.231(2). This is accomplished by a simple request and response procedure that provides a tool for Michigan citizens to obtain documents from public bodies without burdensome cost or the necessity of legal counsel. Because it provides accessibility to the annals of public bodies, FOIA is a powerful tool for consumer advocates, public safety advocates, the press, and other watch dogs of those who govern. Consequently, when an amendment is being enacted by the Legislature to remove a public body from FOIA’s reach, it is a matter of public consequence.

MCL 15.243(1)(d), which includes within the list of public records exempt from disclosure “[r]ecords or information specifically described and exempted from disclosure by statute”, should not be permitted to shield FOIA amendments from the reach of Art. 4, § 25. Allowing FOIA to be amended by reference in any other statute of the entire body of the Michigan Compiled Laws, undermines the effectiveness of FOIA by shielding the enactment of future exemptions from public scrutiny and comment. It also diminishes the public’s accessibility to FOIA, requiring the engagement of a lawyer to determine whether a particular public body is, or is not, exempt. This unduly burdens the exercise of FOIA rights, and is contrary to the very purpose of FOIA.

MCL 500.134(4) is a perfect example. MCL 500.134 is a statute that – by its title – appears unrelated to the MCCA. Nothing in the lengthy title of MCL 500.134 signals that it has any relationship to the MCCA. MCL 500.134 is a smorgasbord of provisions relating to an “association or facility,” but one must read through to the very last provision of that statute, subsection (6), before learning that MCCA is so defined. See MCL 500.134(6)(c). A Michigan citizen desiring to serve a FOIA request on the MCCA would not know from a perusal of FOIA that MCCA will purport to be exempt. The location of this exemption would thwart even the most refined of legal researchers.²³

Given the ease with which constitutional compliance could have been accomplished here, it is particularly disconcerting that the exemption of MCCA from FOIA was not enacted in an appropriate manner. It would have been a simple matter for the Legislature to place the language creating the MCCA exemption into a further subsection of MCL 15.243, and then reenact and republish the section as amended. This would have alerted citizens to the Legislature’s actions, thereby giving persons interested in FOIA and the MCCA an opportunity to express their views. Because the Legislature did not comply with the Constitution in passing this statute, MCL 500.134(4) should be declared void and without effect.

III. There Are Serious and Deleterious Consequences for Michigan Citizens and Businesses if the Legislative Tactic Employed in the Enactment of MCL 15.243(1)(d) and MCL 500.134(4) Were to be Sanctioned by This Court.

The evil lurking in this case goes far beyond FOIA and could wreak havoc and disorder in nearly every segment of society if the Legislature is permitted to embed amendments and exemptions to omnibus statutes in obscure provisions of the Michigan Compiled Laws.

²³ See *Berrien v State of Michigan*, 136 Mich App 772; 357 NW2d 764 (1984) (finding a violation of Art. 4, § 25 where the Legislature sought to amend the county’s right to receive revenue-sharing by “adding a phrase to a section buried within a Department of Social Services Appropriation bill”).

Omnibus codifications of law comprehensively regulate the operations of businesses, entities, professionals and organizations throughout the state. Like FOIA, many of these statutes contain provisions which comprehensively describe applicable exemptions. The following examples are illustrative.

- Examples of omnibus statutes in the field of labor include the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 to MCL 37.2804 (with exemptions at MCL 37.2208, MCL 37.2303, MCL 37.2403 and MCL 37.2404); the Michigan Persons With Disabilities Civil Rights Act, MCL 37.1101 to MCL 37.1607 (with exemptions at MCL 37.1303); and the Michigan Workforce Opportunity Wage Act, MCL 408.411 to MCL 408.424 (with exemptions at MCL 408.420);
- Omnibus statutes governing businesses include the Michigan Consumer Protection Act, MCL 445.901 to MCL 445.922 (with exemptions at MCL 445.904); and the Michigan General Sales Tax Act, MCL 205.51 to MCL 205.78 (with exemptions at MCL 205.54a).
- Food producers must comply with the Michigan Food Law, MCL 289.1101 to MCL 289.8111 (with exemptions at MCL 289.4102 and MCL 289.4105).
- And the list goes on.

If amendments to the multitude of omnibus statutes that regulate conduct in this State can now be placed in any other statute in the entire body of Michigan codified law without actually revising the text of the omnibus statute, as the Legislature attempted to do in passing MCL 500.134(4), it will be impossible for citizens and businesses to determine whether they are subject to the law and to monitor and understand the obligations imposed.

Given the growth of government and the increasing complexity of our laws, it is imperative that citizens understand how to find the laws which regulate them. Onerous burdens will be placed upon those trying to be good citizens if their legal obligations are not clearly discernible. If any one of Michigan's great body of omnibus statutes can be amended by inserting language in any other statute within the vast body of Michigan codified law without reenacting and republishing the amended provisions in the amended law, the deception, disorderliness and confusion that Art. 4, § 25 was designed to avoid will be pervasive.

It is equally important that Michigan citizens be notified of the laws their legislators are considering without having to read every bill proposed for enactment each year.²⁴ If citizens cannot detect that the law is changing, public debate will be quelled and the Legislature will be able to avert by concealment the public oversight that § 25 was designed to foster.

Allowing MCL 15.243(1)(d) to impair the constitutionally-mandated process for amending statutes has consequences for this Court as well. This Court invariably defers to the legislative judgment with respect to the exercise of policy choices. This deference emanates from our separation of powers structure of government and the sanctity of the democratic process. As long as the Legislature adheres to the constitutionally established process that governs its law-making power, this Court can remain confident that legislative acts reflect the will of the people. If the Legislature thwarts that process, however, by disregarding the constitutional restraints the people have imposed, this Court should not validate the laws that result from this inappropriate exercise of legislative power.

²⁴ Between January 1, 2014 and December 31, 2014, 2,527 bills were introduced.

For over 150 years, Michigan’s great Supreme Court Justices have taught that the § 25 limitations on the Legislature’s lawmaking power are designed to assure that transparency and clarity inhere throughout the legislative process so “we the People” can exercise the rights afforded to citizens in a democratic society. They have done this because they so clearly understand that public knowledge and oversight is crucial to achieving the necessary level of confidence in the legislative process that allows deference to be accorded. To preserve the sanctity of that process, the constitutionally-required protocol should be strictly enforced. This will enable citizens to monitor their Legislature and to understand the laws they are required to obey.

IV. Leave to Appeal Should Be Granted to Resolve the Apparent Confusion Created By the Published Court of Appeals Decision in This Case.

The Court of Appeals’ decision in *Coalition Protecting Auto Fault* diverges from this Court’s decisions in *Alan* and *Mok*, and from the Court of Appeals’ prior published opinion in *Nalbandian*. The truncated review given to this issue in *Coalition*, also a published decision, fails to apply the textual analysis long advocated by this Court, and accords no effect at all to § 25. These inconsistent results are perplexing and portend continuing confusion in the law going forward.

This Court should take the opportunity to reaffirm the ongoing vitality of *Alan* and *Mok*, and to unequivocally reject the legislative artifice embraced by the Court of Appeals in *Coalition*. This Court’s most recent pronouncements regarding § 25 have appeared in footnotes or dicta. The aberrant *Coalition* analysis should not be the final word on this issue. As was argued in *Mahaney*, “[a]ll the mischiefs of confused legislation, which this section 25 was intended to prevent, are upon us again, if this act is allowed to stand.”

RELIEF REQUESTED

Plaintiffs-Appellants therefore request that this Court grant their application for leave to appeal and peremptorily reverse, or reverse after hearing, the erroneous decision of the Court of Appeals and reinstate and affirm the Trial Court's December 26, 2012 Order.

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